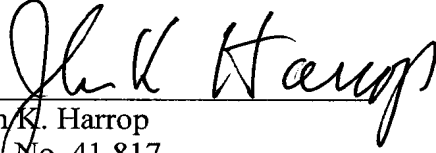# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF E-FILING

I hereby certify that this correspondence has been e-filed with the U.S. Patent and Trademark Office on February 12, 2010.

John K. Harrop
John K. Harrop
Reg. No. 41,817

Appl. No.	:	10/045,151
Applicant	:	Robert C. Lehr et al.
Filed	:	January 15, 2002
Title	:	HARDWARE PAY-PER-USE
TC/A.U.	:	3689
Examiner	:	Michael J. Fisher
Docket No.	:	100201014-1
Customer No.	:	022879

Mail Stop Appeal Brief - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

APPEAL BRIEF UNDER 37 C.F.R. §41.37

TABLE OF CONTENTS

I. REAL PARTY IN INTEREST

Hewlett Packard Company is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences.

Appl. No. 10/045,151
Appeal Brief dated February 12, 2010
In Support of Notice of Appeal filed herewith

5077876.2   - 4 -

III.   STATUS OF CLAIMS

Claims 1 – 16 and 18 – 61 are pending. Claims 1 – 16 and 18 – 61 are rejected. Appellants appeal the rejections of claims 1 – 16 and 18 – 61.

IV.   STATUS OF AMENDMENTS

There are no amendments filed after the final rejection.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

Appellants have discovered a new, improved method, and a corresponding mechanism, that allow computer system operators to tailor their hardware utilization to more closely match changing customer demands. The method and mechanism incorporate flexible pay-per-use pricing plans based on data gathered from the computer system by a separate and distinct hardware device.

The invention recited in claim 1 is a hardware pay-per-use system, which is shown, for example, in Figure 2, and described in the specification at least at page 4, line 10 to page 10, line 20. The system 100 includes metering mechanism 113, which is coupled to hardware products 112 and to a usage repository 120. The metering mechanism 113 is a hardware device separate from the hardware products 112. The metering mechanism 113 determines data to report on the operation of the hardware products 112.

The invention recited in claim 18 is a method 200, shown in Figure 4, and described in the accompanying text, at page 15, line 8 to page 16, line 26, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are coupled to a communications network. In Figure 4, the method 200 includes the steps of acquiring (215), in a hardware device (metering mechanism 113 of Figure 2) separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products; determining (225) data to report based on the acquiring step; sending (230) the determined data to a usage repository; generating (250) a usage report; and generating (255) a pay-per-use invoice based on the usage report.

The invention recited in claim 19 is a method, also shown in Figure 4, and described at page 15, line 8 to page 16, line 26, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are coupled to a communications network. In Figure 4, method 200 includes the steps of acquiring (215), in a hardware device (metering mechanism 113 of Figure 2) separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products; determining (225) data to report based on the acquiring step; sending (230) the determined data to a usage repository; and receiving (260) a pay-per-use invoice, wherein the pay-per-use invoice is based on the data sent to the usage repository.

The invention recited in claim 20, is a method, also shown in Figure 4, and described at page 15, line 8 to page 16, line 26, for pricing hardware on a pay-per-use basis, wherein one or more hardware products 112 (see Figure 2) are at a node coupled to a communications network. Method 200 includes the steps of receiving (235), at a usage repository, metrics data based on an operation of the one or more hardware products, wherein the metrics data are provided by a metering mechanism (113 – see Figure 2) separate from the one or more hardware products; generating (250) a usage report; generating (255) a pay-per-use invoice based on the usage report; and presenting (260) the invoice to the node.

The invention recited in claim 27 is a method 200 for pricing a hardware product 112 based on operating data collected from the hardware product. Referring to Figures 2 and 4 and their accompanying description at page 4, line 10 to page 12, line 14 and page 15, line 8 to page 16, line 26, respectively, the method 200 includes the steps of providing (215) a metering mechanism 113, separate from the hardware product 112, wherein the metering mechanism obtains the operating data from the hardware product; providing the obtained operating data to a processing device, wherein usage data are calculated (220, 225, 240); and generating (255) a pay-per-use invoice based on the usage and pay-per-use pricing plan.

The invention recited in claim 37 is a pay-per-use hardware financing plan. The plan is based on the flowchart shown in Figure 4 and disclosed at page 15, line 8 to page 16, line 26, and includes providing a hardware product to a client at a client site; providing a pay-per-use plan, the plan based on at least one metric acquired from the hardware product; and providing the client site with a mechanism, separate from the hardware product, that acquires the at least one metric, and transmits the at least one metric to a location remote from the client site.

The invention recited in claim 45 is a hardware pay-per-use system (see Figure 2, and accompanying description at page 4 line 10 to page 14, line 10) comprising means 113 for receiving metrics data from one or more hardware products 112; means (130, 140), coupled to the receiving means, for computing usage and billing data from the received metrics data; and means (140), coupled to the computing means, for generating an invoice based on the computed usage and billing data.

The invention recited in claim 53 is a device, shown in Figures 2 and 3, and described in the accompanying text and accompanying description at page 4 line 10 to page 14, line 10, for acquiring metrics data from hardware products 112 in a hardware pay-per-use system 100.

The device 113 is coupled to the hardware products 112, and includes a rules engine 151 comprising one or more business rules for acquiring the metrics data; a processor 153 coupled to the rules engine, wherein the processor controls operation of the device; and a data acquisition engine 159 coupled to the processor, the data acquisition engine comprising programming whereby the metrics data are acquired from the hardware products, the programming including a transport protocol and interface for transporting the metrics data from the hardware products to the device, and wherein the device 113 is distinct from the hardware products 112.

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 – 4, 8 – 12, 16, 18 – 25, 27, 28, 32, 35, 37 – 41, 44, 45, 47, 48 and 50 – 54 are rejected under 35 U.S.C. § 102(b) over U.S. Patent 5,745,884 to Carnegie et al. (hereafter Carnegie). The Examiner contends that Carnegie discloses "a hardware pay per use system (title) comprising one or more hardware products (col 4, lines 53 – 56), a metering agent that acquires metrics data (306, 316, as best seen in fig. 3), and a usage repository that generates reports on the received data (308, 318)."

Claims 5 – 7, 13 – 15, 26, 29 – 31, 33, 34, 36, 42, 43, 46, 49, and 55 – 61 are rejected under 35 U.S.C. § 103(a) over Carnegie.

VII.   ARGUMENT

A.   REJECTIONS UNDER 35 U.S.C. § 102(b) OVER U.S. PATENT 5,745,884

On page 2 the Final Office Action rejects claims 1 – 4, 8 – 12, 16, 18 -25, 27, 28, 32, 35, 37 – 41, 44, 45, 47, 48, and 50 - 54 under 35 U.S.C. §102(b) over U.S. Patent 5,745,884 to Carnegie et al. (hereafter Carnegie).

The Office Action contends that Carnegie discloses "a hardware pay per use system (title) comprising one or more hardware products (col 4, lines 53 – 56), a metering agent that acquires metrics data (306, 316, as best seen in fig. 3), and a usage repository that generates reports on the received data (308, 318)." This statement is the sole basis for rejection of the independent claims.

Carnegie is directed to a system for collecting revenues from computer users when those computer users connect their computers through a public network, such as the Internet, to their home network or local area network. *See, e.g.*, Abstract, column 4, lines 30 – 32. Carnegie does not disclose or suggest collecting metrics information related to the operation of the computers, merely the act of connection. *See also*, column 5, lines 45 – 52: Each time a remote user becomes connected to a home system ... the information may be stored for billing purposes on a per user, per connection basis." Clearly, Carnegie's system relates only to connectivity, not operation.

1.   Claim 1

Considering claim 1, the Examiner's position is totally without support. First, the title of Carnegie's patent is "System and Method for Billing Data Grade Network Use **on a Per Connection Basis**" (emphasis supplied). That is, Carnegie does not bill a user based on an operation of the computer, but instead, bills the user each time the user's computer connects to a network. In Carnegie's system, there are no metrics data recorded or reported, because there is no need for this information.

Second, the rejection does not address each element of claim 1. For example, claim 1 recites that the acquired metrics data is "related to an operation at the one or more hardware products." Claim 1 also recites that the generated usage reports "[relate] to the operation of the one or more hardware products." Claim 1 further recites the "metering mechanism includes a hardware device separate from the one or more hardware products." The rejection does not address these elements of claim 1.

Third, nowhere in Carnegie's disclosure is anything more than billing based on connection ever disclosed or suggested. Starting with the Abstract, Carnegie discloses that "remote users may be billed, on a per connection basis," and "[b]illing for this service is easily facilitated on a per user, per connection basis, since establishment [of the connection] creates a recordable billable event for which either the remote user or the destination server 130 may be invoiced."

Turning to the drawings, the Examiner asserts that Figure 3 best shows a metering agent that acquires metrics data. Instead, what Figure 3 clearly shows is that billing is based on a connection, and on a connection only. The word metrics, or any word suggestive of this parameter, is totally lacking from Figure 3. Consider step 306: "AP records destination, remote user, date and time"; step 308: "AP SYSOP bills destination, for connection"; step 316: AP records destination, remote user, date and time"; step 318: AP SYSOP bills remote user for connection"; step 326: "AP records destination, remote user, date and time"; and step 324: "AP SYSOP bills credit card/debit card for connection."

Moving on to the "Technical Field of the Invention" what is disclosed is "[t]he invention generally relates to ... a system and method for billing, on a per connection basis ... ."

The Background of the Invention states: "Access to data grade networks, however, is very rarely available in the public locations" (col 3, lines 28 – 29); "It will thus be seen that billing systems on a per user, per connection basis are currently low considerations in the deployment of data grade networks" (col 3, lines 47 49); "it will be readily seen that a per user, per connection billing system will become highly advantageous" (col 3, lines 51 – 52).

The Summary of the Invention states: "The present invention allows a mobile user to obtain high speed access to ... [a] network ... while being individually billed ... for such access on a per connection basis." (Col 4, lines 30 – 34) The Summary further states:

> The enablement of this tunneled protocol further establishes a billable event for a particular remote user communication. Each time a remote user becomes connected to a home system via a tunneled protocol, the remote user and the home system necessarily become identified through execution of authorization procedures. The enablement of the tunneled protocol may further be memorialized by date, time, and AP at which the remote user is connected. This information may be stored for billing purposes on a per user, per connection basis. (Col 5, lines 43 – 52)

Other portions of the Summary make it clear that Carnegie is directed to the method by which the connection is made, while all the time staying with the notion that billing is performed on a per user, per connection basis. (Col. 4, line 41 – col 5, line 42)

The Brief Description of the Drawings states that "FIG. 3 is a flow chart illustrating an exemplary method of recording access by remote users to a data grade system of the present invention and billing pre-designated parties (advantageously either the remote user or the operator of the destination server) for each access." (Col 6, lines 47 – 52)

The Detailed Description of the Invention is replete with references to billing based on connection alone. Consider the following example, and note that the quote passage begins with a header:

Billing on a per-user, per connection basis

It will be readily understood from the foregoing description that establishment of tunneled IP 124 on FIG. 1 creates a billable event. In other words, when tunneled IP 124 is established through AP 110 between portable device 101 and destination server 130 (see block 217 on FIG. 2), information regarding the event may be captured and recorded. The event may then be invoiced for by conventional means.

By way of example, and not by way of limitation, FIG. 3 is a flow chart illustrating an exemplary method of recording access by remote users to a data grade system of the present invention and billing pre-designated parties (advantageously either the remote user or the operator of the destination server) for such access. As noted, method begins at block 301 with the establishment of tunneled IP 124 over data grade connection 122. At this point, AP 110 identifies destination server 130 to see if it is associated with a pre-established billing account holder (blocks 302 and 304). If it is, then AP 110 records, in block 306, information regarding the connection to that account holder's file, such as destination server 130, the remote user's identity (from signature information included in signals from signaling resource 105), passwords, keys, the destination server 130, as well as the date and the time that the particular tunneled IP 124 was established. The sysop of AP 110, or some other billing entity, then subsequently bills the account holder for the connection based on the recorded information accumulated in the account holder's file (block 308). (Col 11, line 63 – col. 12, line 23)

There are numerous other places in the disclosure where Carnegie makes clear that the sole basis for billing is a per user, per connection basis. Carnegie does not contain one scintilla of disclosure to suggest any other basis for billing, including billing based on an

operation of a hardware device. As one might suspect, given the constancy of this disclosure, Carnegie's claims recite billing on a per user, per connection basis. *See, e.g.* claim 1.

In contrast to Carnegie, claim 1 recites:

A hardware pay-per-use system, comprising:

> one or more hardware products;
>
> a metering mechanism coupled to at least one or the one or more hardware products, wherein the metering mechanism includes a hardware device separate from the one or more hardware products, wherein the metering mechanism acquires metrics data from the one or more hardware products, the metrics data related to an operation at the one or more hardware products, and wherein the metering mechanism determines data to report on the operation of the one or more hardware products; and
>
> a usage repository coupled to the metering mechanism, the usage repository receiving the determined data and generating usage reports related to the operation of the one or more hardware products.

As noted above, Carnegie does not disclose or suggest, *inter alia*, "a metering mechanism ... [that] acquires metrics data ... related to an operation at the one or more hardware products, and wherein the metering mechanism determines data to report on the operation ... ." Because Carnegie does not disclose or suggest at least this element, claim 1 is patentable.

2. Independent Claims 18 – 20, 27, 37, 45, and 53

As with Claim 1, and in contrast to Carnegie, each of the independent claims 18 – 20, 27, 37, 45, and 53 recites a metering mechanism (or corresponding method) that acquires metrics data related to an operation at the hardware products, wherein the metering mechanism determines data to report on the operation of the hardware products. Because Carnegie does not disclose or suggest all the elements of claims 18 – 20, 27, 37, 45, and 53, these claims also are patentable.

3. Claims 11 and 41

The Office Action asserts that the "data is provided on a periodic basis," and cites Carnegie, claim 7. What Carnegie's claim 7 actually recites is "means for sending periodic invoices." Claims 11 and 41 recite <u>metrics</u> provided on a periodic basis. An invoice is not a metric. An invoice is a bill. In fact, in Carnegie, and in any telephone system, the "metrics"

are provided on an as-called basis. That is, the ANIs and start and stop time for each call are recorded and sent to a central billing location at or near the conclusion of the call.

In responding to Appellants' arguments (see Final Office Action, page 6 "Response to Arguments"), the Examiner states "Applicant's arguments filed August 13, 2009... are not persuasive. As to arguments in relation to Carnegie, the Examiner agrees, the prior art teaches charging users for using a computer service, it is based on 'metrics'. As to arguments in relation to 'provided on a periodic basis', billing is periodic and not 'as called'. Further, 'as called' is periodic, there is no requirement that the 'period' be the same."

Again, the plain language of claims 11 and 41 clearly relate to metrics gathered on a periodic basis; Carnegie's claim 7 recites sending an invoice periodically. Carnegie does not anticipate the inventions recited in clams 11 and 41.

4. Other Dependent Claims

Claims 2 – 4, 8 – 10, 12, 16, 21 – 25, 28, 32, 35, 38 – 40, 44, 47, 48, and 50 – 54 depend, respectively, from claims 1, 20, 27, 37, 45, and 53, and for this reason and the additional features they recite, claims 2 – 4, 8 – 10, 12, 16, 21 – 25, 28, 32, 35, 38 – 40, 44, 47, 48, 50 – 52, and 54 also are patentable.

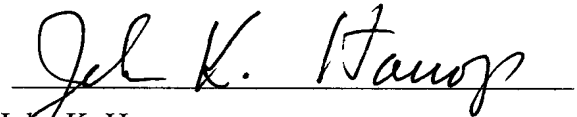### B. REJECTIONS UNDER 35 U.S.C. § 103(a)

On page 5 of the Final Office Action rejects claims 5 – 7, 13 -15, 26, 29 – 31, 33, 34, 36, 42, 43, 46, 49, and 55 – 61 under U.S.C. § 103(a) over Carnegie.

Claims 5 -7, 13 – 15, 26, 29 – 31, 33, 34, 36, 42, 43, 46, 49, and 55 – 61 depend from one of patentable claims 1, 20, 27, 37, 45, and 53. For this reason and the additional features they recite, claims 5 – 7, 13 – 15, 26, 29 – 31, 33, 34, 36, 42, 43, 46, 49, and 55 – 61 also are patentable.

The Appeal Brief fee in the amount of $540.00 is being paid on the accompanying transmittal letter for an Appeal Brief. Should there be any additional fees required for this Appeal Brief, please charge any fees or credit any over payment to **Deposit Account 08-2025** pursuant to 37 C.F.R. §1.25.

Respectfully submitted,

Date: _Feb 12, 2010_

John K. Harrop
Registration No. 41817
Thompson Coburn LLP
1909 K Street, NW
Suite 600
Washington, DC 20006
Tel. (202) 585-6979
Fax. (202) 508-1038

VIII.   CLAIMS - APPENDIX

Claim 1:   A hardware pay-per-use system, comprising:

one or more hardware products;

a metering mechanism coupled to at least one of the one or more hardware products, wherein the metering mechanism includes a hardware device separate from the one or more hardware products, wherein the metering mechanism acquires metrics data from the one or more hardware products, the metrics data related to an operation at the one or more hardware products, and wherein the metering mechanism determines data to report on the operation of the one or more hardware products; and

a usage repository coupled to the metering mechanism, the usage repository receiving the determined data and generating usage reports related to the operation of the one or more hardware products.

Claim 2: The system of claim 1, further comprising a billing and accounting system, coupled to the usage repository, the billing and accounting system receiving the usage reports, wherein a pay-per-use invoice is determined based on the usage reports.

Claim 3:   The system of claim 2, further comprising a portal coupled to the usage repository and the billing and accounting system, wherein the portal, comprises:

a usage reports mechanism, wherein the usage reports are displayable;

an invoice presentation mechanism, wherein the invoice is presentable; and

an invoice payment mechanism, wherein a payment on the invoice is receivable.

Claim 4:   The system of claim 1, wherein the usage repository, comprises:
a validation server; and

a usage database coupled to the validation server, wherein the validation server validates the determined data received at the usage repository and verifies a correct configuration of the one or more hardware products, and wherein the usage database stores the determined data and the usage reports.

Claim 5:   The system of claim 1, wherein the metering mechanism is a rack-mountable hardware device in a networked computer system.

Claim 6:   The system of claim 1, wherein the metering mechanism is a standalone computer.

Claim 7:   The system of claim 1, wherein the metering mechanism is a part of a server coupled to the one or more hardware products.

Claim 8:   The system of claim 1, wherein one or more of the one or more hardware products comprise metering agents that collect the metrics data acquired by the metering mechanism.

Claim 9:   The system of claim 1, wherein the metering mechanism comprises a rules engine, and wherein rules in the rules engine are used to determine the data to report.

Claim 10:   The system of claim 1, wherein the metering mechanism comprises a polling engine, wherein the metering mechanism polls the one or more hardware products to acquire the metrics data.

Claim 11:   The system of claim 1, wherein the one or more leased hardware products provide the metrics data on a periodic basis.

Claim 12:   The system of claim 1, wherein the operation is central processor unit (CPU) utilization.

Claim 13:   The system of claim 1, wherein the one or more hardware products are leased.

Claim 14:   The system of claim 1, wherein the metering mechanism is located at a first site, which is a same site as the one or more hardware products, and the usage repository is located at a second site remote from the first site.

Claim 15:   The system of claim 14, wherein the first site and the second site are Internet Web sites.

Claim 16:   The system of claim 1, wherein the metering mechanism and the usage repository are located at a site remote from the one or more hardware products.

Claim 17:   cancelled.

Claim 18:   A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are coupled to a communications network, comprising:

acquiring, in a hardware device separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products;

determining data to report based on the acquiring step;

sending the determined data to a usage repository;

generating a usage report; and

generating a pay-per-use invoice based on the usage report.

Claim 19:   A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are coupled to a communications network, comprising:

acquiring, in a hardware device separate from the one or more hardware products, metrics data related to an operation of the one or more hardware products;

determining data to report based on the acquiring step;

sending the determined data to a usage repository; and

receiving a pay-per-use invoice, wherein the pay-per-use invoice is based on receiving a pay-per-use invoice, wherein the pay-per-use invoice is based on the data sent to the usage repository.

Claim 20:   A method for pricing hardware on a pay-per-use basis, wherein one or more hardware products are at a node coupled to a communications network, comprising:

receiving, at a usage repository, metrics data based on an operation of the one or more hardware products, wherein the metrics data are provided by a metering mechanism separate from the one or more hardware products;

determining data to report based on the metrics data;

generating a usage report based on the determined data;

generating a pay-per-use invoice based on the usage report; and

presenting the invoice to the node.

Claim 21:   The method of claim 20, further comprising receiving a payment on the invoice.

Claim 22:   The method of claim 20, wherein generating the usage report, comprises:
applying one or more rules to the metrics data, wherein application of the rules processes the metrics data into a data structure representing an operation of the one or more hardware products.

Claim 23:   The method of claim 22, wherein generating the pay-per-use invoice comprises comparing the usage reports to a pay-per-use pricing plan, wherein the pricing plan specifies a finance rate component based on the metrics data.

Claim 24:   The method of claim 23, wherein the finance rate component varies with variations in the metrics data.

Claim 25:   The method of claim 22, wherein the received metrics data is determined based on one or more supplied business rules.

Claim 26:   The method of claim 25, wherein the operation relates to central processor utilization over a given time interval, and wherein an applied business rules require reporting a peak utilization over the time interval.

Claim 27:   A method for pricing a hardware product based on operating data collected from the hardware product, comprising:

providing a metering mechanism, separate from the hardware product, wherein the metering mechanism obtains the operating data from the hardware product; and

providing the obtained operating data to a processing device, wherein usage data are calculated; and

generating a pay-per-use invoice based on the usage data and a pay-per-use pricing plan.

Claim 28:   The method of claim 27, further comprising providing the metering mechanism with a polling function, wherein the hardware product is polled to obtain the operating data.

Claim 29:   The method of claim 27, wherein the hardware product is leased, wherein the pay-per-use invoice is presented to a lessee of the hardware product.

Claim 30:   The method of claim 29, further comprising receiving an inquiry from the lessee.

Claim 31:   The method of claim of claim 29, further comprising providing means for displaying the usage data, and means for receiving payment on the invoice.

Claim 32:   The method of claim 27, further comprising: validating the obtained operating data;

verifying an approved configuration of the hardware product; and

saving the operating data.

Claim 33:   The method of claim 27, wherein the metering mechanism is provided at a first site, which is a same site as the hardware product, and wherein the processing device is provided at a second site remote from the first site.

Claim 34:   The method of claim 33, wherein the first site and the second site are Internet Web sites.

Claim 35:   The method of claim 27, wherein the metering mechanism and the processing device are provided at a site remote from the hardware product.

Claim 36:   The method of claim 35, wherein the site is an Internet Web site.

Claim 37:   A pay-per-use hardware financing plan, comprising:

        providing a hardware product to a client at a client site;

        providing a pay-per-use plan, the plan based on at least one metric acquired from the
hardware product; and

        providing the client site with a mechanism, separate from the hardware product, that
acquires the at least one metric, and transmits the at least one metric to a location remote
from the client site.

Claim 38:   The pay-per-use hardware financing plan of claim 37, wherein the mechanism
polls the hardware product to obtain the at least one metric.

Claim 39:   The pay-per-use hardware financing plan of claim 37, further comprising:

        generating a usage report based on the at least one metric;

        computing a pay-per-use invoice based on the at least one metric; and

        presenting the client with the pay-per-use invoice.

Claim 40:   The pay-per-use hardware financing plan of claim 39, further comprising
making the usage report available to the client.

Claim 41:   The pay-per-use hardware financing plan of claim 27, wherein the at least one
metric is transmitted to the remote site on a periodic basis.

Claim 42:   The pay-per-use hardware financing plan of claim 32, wherein the periodic
basis is daily.

Claim 43:   The pay-per-use hardware financing plan of claim 27, wherein an initial
configuration of the hardware product is stored at the remote location, and wherein the
remote site:

        validates the at least one metric; and

        verifies a current configuration of the hardware product matches the initial
configuration.

Claim 44: The pay-per-use hardware financing plan of claim 37, further comprising providing a software metering agent with the hardware product.

Claim 45: A hardware pay-per-use system, comprising:

means for receiving metrics data from the one or more hardware products;

means, coupled to the receiving means, for computing usage and billing data from the received metrics data;

means, coupled to the computing means, for generating an invoice based on the computed usage and billing data.

Claim 46: The system of claim 45, wherein one or more hardware products are leased to a client for installation at a client site.

Claim 47: The system of claim 46, wherein the client site is a site on a digital communications network.

Claim 48: The system of claim 45, wherein the receiving means, comprises:

means for validating the received metrics data;

means for verifying a configuration of the one or more hardware products; and

means for storing the metrics data and the configuration.

Claim 49: The system of claim 45, further comprising:

means, coupled to the one or more hardware products, for obtaining the metrics data from the one or more hardware products, comprising:

means, installed in the one or more hardware products, for collecting the metrics data, and means, coupled to the collecting means, for acquiring the collected metrics data, wherein the acquiring means is a standalone hardware device separate from the hardware products.

Claim 50: The system of claim 45, further comprising:

means, coupled to the generating means, for generating a usage report based on the received usage data; and

means for presenting the usage report to a client.

Claim 51:   The system of claim 45, further comprising:

means for presenting the invoice to a client; and

means for receiving a payment from the client based on the invoice.

Claim 52:   The hardware pay-per-use system of claim 45, wherein at least one of the one or more hardware products includes bundled software, and wherein the means for generating the invoice includes means for pricing utilization of the bundled software based on hardware metrics data.

Claim 53:   A device for acquiring metrics data from hardware products in a hardware pay-per-use system, the device coupled to the hardware products, the device, comprising:

a rules engine comprising one or more business rules for acquiring the metrics data;

a processor coupled to the rules engine, wherein the processor controls operation of the device; and

a data acquisition engine coupled to the processor, the data acquisition engine comprising programming whereby the metrics data are acquired from the hardware products, the programming including a transport protocol and interface for transporting the metrics data from the hardware products to the device, and wherein the device is distinct from the hardware products.

Claim 54:   The device of claim 53, further comprising:

a communications engine, whereby the metrics data are encrypted, compressed and packaged for delivery to a remote location;

a display driver, whereby specified metrics data are provided for display; and

a database that stores the metrics data acquired by the device.

Claim 55:   The device of claim 53, wherein the processor, comprises:

means for testing a first transport mechanism from the hardware products to the device; and

means for testing a second transport mechanism from the device to a remote location.

Claim 56:   The device of claim 55, wherein the first and the second transport mechanisms include one or more of SNMP, WBEM, HTTP, HTTP/S and e-mail.

Claim 57:   The device of claim 55, wherein the means for testing the second transport mechanism includes uploading a test file from the device to the remote location.

Claim 58:   The device of claim 55, wherein the means for testing the first transport mechanism includes obtaining a known response from the hardware products.

Claim 59:   The device of claim 58, wherein the hardware products comprise metering agents, and wherein the known response is provided by the metering agents.

Claim 60:   The device of claim 53, wherein the metrics data are acquired by the device over the Internet.

Claim 61:   The device of claim 53, wherein the metrics data are acquired by the device over a digital data communications network.

IX. EVIDENCE – APPENDIX

No evidence is submitted.

X.   RELATED PROCEEDINGS – APPENDIX

There are no related proceedings.